IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 699

REVEREND JOHN EARL CAMERON, ET AL.,
Appellants,

vs.

PAUL B. JOHNSON, JR., ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR APPELLEES

JOE T. PATTERSON,
Attorney General of the State of Mississippi
WILL S. WELLS,
Assistant Attorney General of the State of Mississippi
WILLIAM A. ALLAIN,
Assistant Attorney General of the State of Mississippi
New Capitol Building
Jackson, Mississippi
Attorneys for Appellees

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-8080

INDEX

TABLE OF CASES

STATUTES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 699

REVEREND JOHN EARL CAMERON, ET AL.,
Appellants,

vs.

PAUL B. JOHNSON, JR., ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR APPELLEES

1

STATEMENT

Appellants' statement of the case is sufficiently inclusive as not to warrant a further statement in this brief. Appellants' Statement of Facts is generally correct with some exceptions:

The statement that the pickets never blocked anyone from passing them was disputed by the witness Dukes and the witness Bowling.

Appellants' statement on page 11 of his brief as to what transpired on April 9, 1964, is at variance with the testimony of witness Dukes and, therefore, was an issue of fact to be decided by the district court. Otherwise, appellants' statement of the facts is generally correct.

QUESTIONS BEFORE THE COURT

1. Whether 28 U.S.C. 2283 bars a Federal Injunction in this case.
2. If 2283 is not a bar, whether relief is proper in light of the criteria set forth in *Dombrowski* v. *Pfister*, 380 U.S. 479.

POINT I.

This suit is before the Court on the Amended Complaint filed on or about June 1, 1964. The named Appellants are Reverend John Earl Cameron and Mrs. Victoria Jackson Gray. They seek to bring this suit as a class action. Appellants contend that Title 42, U.S.C. 1971 and 1983 are within the exceptions contained in Title 28, U.S.C. 2283.

We first turn our attention to Section 1971 which has to do in its entirety with the right to vote (which includes the right to register to vote).

Throughout the entire record made in this case, it is conceded by Appellants that the main purpose of the demonstrations and picketing near the courthouse in Hattiesburg was to encourage Negroes to register to vote. This activity was described by the Appellant Cameron and the other witnesses who testified after a voter registration

drive. Although the Amended Complaint alleges in Paragraph 12 that the Defendants have threatened and continued to threaten the enforcement of the statute herein attacked, there is not one scintilla of evidence that Mrs. Gray has ever been arrested, as in fact she has not, or even been threatened or ever took part in the demonstrations or picketing. Therefore, Reverend John Earl Cameron becomes the only named Appellant purportedly representing the class.

The record further shows that the Reverend Cameron became a registered voter several years before this activity started and in fact was a candidate for office during the time the picketing was in progress. Appellants apparently base their claim under 1971 (b) which provides that no person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other person to vote, etc. There is no proof in this record of any attempt to violate this Section so far as it pertains to Reverend Cameron. Therefore, he is without capacity to bring a class action in this regard; nor is he entitled to any relief under this Section. In fact, the preventive relief prescribed by Section 1971 which is contained in subparagraph (c) of that Section is delegated to the Attorney General of the United States.

Thus, it would seem that it is not necessary for this Court to determine whether 42 U.S.C. 1971 is within the exception contained in 28 U.S.C. 2283 because Reverend Cameron is not a member of the class he seeks to represent so far as that Section is concerned.

Appellants claim that the Fifth Circuit in the case of the *United States* v. *Wood*, 295 F.2d 772, has determined

that Section 1971 is an exception to 2283. We do not agree. The Wood case simply held that 2283 did not apply to the United States under the Leiter Minerals Case. While it is true that Judge Rives, writing for the Court, touched on this question, he did so from the standpoint that the suit was brought by the United States under an obligation charged to it by the Civil Rights Act for the protection of constitutional rights in which there is the highest public interest. The Wood Case in no sense is analogous to the Cameron Case. In *Wood* an assault was made on Hardy in the Registrar's Office by the Registrar himself and in the presence of two (2) Negroes who had been brought to his office by Hardy and were in the process of filling out applications to register. They were frightened to the extent that they ran out of the office before they had finished and at the time the suit was heard no other Negro had been back to the office in an attempt to register. Further, it was clear beyond any peradventure of doubt that the criminal charges brought against Hardy were completely and wholly fictitious and without merit.

We now turn to 42 U.S.C. 1983.

We have been unable to find any case wherein a prosecution of a criminal case in a State Court has been enjoined under the theory that 1983 is an exception contained in 2283. The most exhaustive discussion of this question which we have found is contained in the case of *Baines* v. *City of Danville*, 337 F.2d 579. The Fourth Circuit, in its Opinion decided August 10, 1964, under the general heading in the Opinion "Refusal to Stay Criminal Proceedings in the State Courts," found on pages 586 through 596, discusses every case bearing on the subject to the date of that decision. We disagree with Appellants that Dombrowski, in any way, is in conflict with the decision in *Baines* v. *City of Danville*. We know of no case in

conflict with this opinion. In fact, in the case of *Dilworth* v. *Riner*, 343 F.2d 226, the Fifth Circuit in holding that Section 2283 was not an impediment to the enjoining of a criminal prosecution because of the specific right created under the public accommodation section of the Civil Rights Act of 1964 called specific attention to the Baines Case and used this very significant language:

> "[14] Neither Poole v. Barnett, 5 Cir., 1964, 336 F.2d 267, or Baines v. City of Danville, 4 Cir., 1964, 337 F.2d 579, is contrary to the conclusions we have reached. The Poole case did not involve unlawful action on the part of the state officers under the federal law as it existed at that time, the opposite of the case here. Baines involved 42 U.S.C.A., § 1983, a part of the Civil Rights Act of 1871, which merely confers a broad and general grant of equity jurisdiction. That Act, unlike § 203(c) of the 1964 Act, created no right of the type here involved, the right to be free from punishment for peacefully claiming the right to equal public accommodation, the existence of which right is no longer open to conjecture. Hamm v. City of Rock Hill, supra."

Are Appellants Entitled to Relief in the Light of the Criteria Set Forth in Dombrowski

The situation here is in no way analogous to the situation in Dombrowski. In Dombrowski a suit was filed seeking declaratory relief and injunction restraining the defendant from prosecuting or threatening to prosecute Plaintiffs under several statutes of Louisiana. At the time this suit was filed there were no criminal prosecutions in the State Courts. The suit attacked the statutes on their face because of over-breadth and charged that the threats to enforce these statutes were not made with any expectation of securing valid conviction but were part of a plan to employ arrests, seizures and threats of prosecution to harass Plaintiffs and discourage them and their supporters from asserting and attempting to vindicate rights of Negro

citizens of Louisiana. A Three-Judge District Court was convened and the case dismissed for failure to state a claim on which relief could be granted. The case was submitted on Plaintiffs' allegations and offers of proof and motion to dismiss, the Court feeling that this was an appropriate case for abstention. Prior to the filing of this suit in Federal Court, Dombrowski and others were arrested and charged with violations of two (2) statutes. Their offices were raided and their files and records were seized. Later in October a State Judge quashed the arrest warrant and discharged the Plaintiffs. Subsequently, the Court granted a Motion to Suppress the seized evidence on the grounds that the raid was illegal. In the face of this, Louisiana Officers continued to threaten prosecution of Plaintiffs who filed the suit in Federal Court. After the Three-Judge Court was convened a Grand Jury was summoned to hear evidence looking to indictments of Plaintiffs. On Plaintiffs' application Judge Wisdom, a member of the Three-Judge Court, issued a Temporary Restraining Order against prosecution pending a hearing and decision of the case in the District Court. Following the hearing the Temporary Injunction was dissolved and an Order of Dismissal was entered and thereafter the Grand Jury returned indictments under two (2) statutes against the Plaintiffs. On appeal to the Supreme Court, the Court held that the District Court should not have abstained. It further held that 2283 did not preclude injunctions against institution of State Court proceedings but only bars stays of suits already instituted. In addition, the Supreme Court held the two (2) statutes involved as being unconstitutional on their face. The Court used this very significant language:

> "In considering whether injunctive relief should be granted, a federal district court should consider the statute as of the time its jurisdiction is invoked, rather

than some hypothetical future date. The area of proscribed conduct will be adequately defined and the deterrent effect of the statute contained within constitutional limits only by authoritative constructions sufficiently illuminating the contours of an otherwise vague prohibition. As we observed in Baggett v. Bullitt, supra, 377 U.S. at 378, 12 L. ed. 2d at 389, this cannot be satisfactorily done through a series of criminal prosecutions, dealing as they inevitably must with only a narrow portion of the prohibition at any one time, and not contributing materially to articulation of the statutory standard. We believe that those affected by the statute are entitled to be free of the burdens of defending prosecutions, however expeditious, aimed at hammering out the structure of the statute piecemeal, with no likelihood of obviating similar uncertainty for others." (14 L. Ed. 2d at page 31)

The Court's attention is called to the footnote of the Dissenting Opinions of Justices Harlan and Clark on page 35 to this effect: "If the State criminal prosecution were instituted first, a Federal Court could not enjoin the State action," citing 28 U.S.C. 2283.

The aspects of this case are in no way similar to the situation in Dombrowski. Only one statute is involved and there seem to be no common questions of law in the two cases.

Should this Court feel that 28 U.S.C. 2283 is not a bar to a Federal injunction then the two questions that should be decided are, first, is the statute here under attack unconstitutional on its face and if not, is it being or has it been unconstitutionally applied to Appellants.

On the question of the constitutionality of this statute on its face we do not feel that anything, helpful to the Court, could be added to the Dissenting Opinion of Mr. Justice Black, Mr. Justice Harlan and Mr. Justice Stewart plus the Dissenting Opinion of Mr. Justice White.

Therefore, we now come to the question of the unconstitutional application of this statute. The thrust of Appellants' claim is that the enforcement of this statute was for the purpose of, and had the effect of, intimidating and discouraging Negroes from registering to vote in Forrest County, Mississippi. They frankly admit that the main purpose of their demonstrations and picketing was to support a voter registration drive. They claim that the arrests made were solely for the purpose of discouraging that effort and claimed that unless an injunction were issued against the prosecution of these cases Negroes would cease trying to register. The record shows that these demonstrations started in January, 1964 and continued almost daily up until April 10, 1964. Prior to the passage of the statute here under attack, the officers in Hattiesburg could do little to prevent obstruction to the entrance to the courthouse. They first sought to prescribe an area for this picketing and fortunately the Plaintiffs here, confined their picketing to those areas. Even then the area of march was near two (2) entrances to the courthouse. Mr. James Dukes, County Attorney, testified that since January 21, 1964 the officers had had complaints constantly (Tr. 312) (App. 267). Mr. Selby Bowling, President of the Board of Supervisors of Forrest County, testified that the picket line was a nuisance so far as people trying to get in or out of the courthouse (Tr. 328, 329) (App. 276, 277). Mr. Dukes further testified that on April 9 after the statute herein attacked was passed that the Sheriff, in company with the District Attorney, County Attorney and Deputy Sheriff, went out to where these people were picketing and read the statute to them stating that they had been picketing in such manner as to obstruct and interfere with the entrance to the courthouse and stated to them that he did not want to have to arrest anyone but if they continued to picket in the manner

that they had been he would be forced to arrest them. He further told them that they could continue to picket so long as they did not do it so close together and in such numbers to block the entrances and sidewalks (Tr. 276, 277) (App. 247, 248). That night Appellants had a meeting, discussed the new statute and according to their own admission decided to go to the courthouse in a large body and even prepared a written statement for the Press. Apparently they intended to make a test of this statute because it is quite evident that they expected to be arrested. The pictures introduced show in unmistakable terms the size of the crowd and the closeness with which they were marching. The evidence is in dispute concerning the arrest but both the Deputy Sheriff Morgan and Mr. Dukes testified that Sheriff Gray warned them that they could not continue in such a large group and in such manner and gave them ample time to either disperse or rearrange their picket line before they were arrested.

Appellants claim that this arrest was made for the sole purpose of preventing their continuing a picket line and to discourage Negroes from registering. Yet we find that between April 11 and May 18 they continued to picket in small groups and in such manner as not to obstruct or unreasonably interfere with entrances and exits and were not molested in any way by the officers. On May 18 another large group appeared, apparently to force some action by the officers, and they were arrested. If these arrests were made by the officers to stop picketing and in effect stop this registration drive, it is strikingly strange that no effort was made to stop them from April 11 to May 18, a period of thirty-eight (38) days.

Did these arrests have the chilling effect of discouraging Negroes from registering to vote? We find from the record, and it is undisputed, that the registration of Ne-

groes in Forrest County actually increased rather than decreased after May 18. Appellant Cameron himself testified that since May, 1964 more Negroes had registered to vote in Forrest County than had registered for two (2) or three (3) years prior to that time (Tr. 204) (App. 211). He was asked this question: "Since May 18 when this last arrest was made more Negroes have registered in Forrest County from that time until now than had been registered prior to that day. Isn't that correct?" His answer was, "That's correct; more Negroes were." He was then asked the question: "The rate of registration has picked up since that time. Hasn't it?" His answer was, "That's true." Mrs. Peggy Jean Connor was asked this question: "As a matter of fact the registration in Forrest County among Negroes has picked up and increased since April of 1964 rather than decreased; hasn't it?" Her answer was "Yes." (Tr. 247) (App. 232). We find therefore that these arrests did not have the effect that Appellants claimed they would have when this suit was filed.

This Court is not faced with trying to determine whether all of these people are guilty of a violation of this statute beyond every reasonable doubt. That is for a State Court to determine if and when they are tried on separate affidavits. What this Court should look to and determine is whether or not there is sufficient evidence in this record to justify a determination that these people were arrested and charged with a violation of the statute for the sole purpose of thwarting the registration drive and discourage Negroes from registering to vote. If these charges were made in good faith and there is no allegation here that they cannot get a fair trial in State Court and these arrests have not resulted in discouraging Negroes from registering to vote, the Appellants have wholly failed to sustain their claim of an unconstitutional application of

this statute. They therefore are not entitled to any relief in the proper light of the criteria set forth in *Dombrowski.*

We see no merit in the contention of the Counsel for Appellants that because these criminal cases were removed to Federal Court, *at the instance of Appellants,* they no longer constitute pending cases in State Courts (Italics ours).

We further see no merit in the argument of Counsel that because this statute has been amended by writing into it the word "unreasonable" prior to "interfering" that it becomes more vague and over-reaching. Actually, the staute has become more narrowly drawn.

Counsel further contends that certain entrances to the courthouse were not obstructed and that, therefore, the statute should not be enforced because of an unreasonable interference or obstruction of other entrances. That is tantamount to saying that if these people had only blocked the front entrances the public should be required to use the back entrance without complaining. This, of course, is completely unreasonable.

Appellants lay great stress on the fact that subsequent to the enactment of Section 2318.5 of Mississippi Code of 1942, the statute here under attack, several parades were permitted on the public streets of Hattiesburg, some of which run in front of the courthouse, and no arrests were made. They claim that this is selective enforcement of this statute. Of course, these parades were held on the public streets, not on the walkways within the courthouse grounds, leading to the entrances to the courthouse. Complete answer to this argument was made in the majority opinion of the district court, written by Judge Coleman, Circuit Judge.